

Teledyne Economic Development Co. and Retail Clerks Union, Local No. 727, United Food and Commercial Workers International Union, Petitioner. Case 28-RC-4047

December 16, 1982

**DECISION ON REVIEW AND
DIRECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Cynthia Hudson of the National Labor Relations Board. On October 6, 1981, the Regional Director for Region 28 issued a Decision and Direction of Election.¹ Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a request for review of the Regional Director's decision on the basis, *inter alia*, that a substantial question of law is raised because of a departure from officially reported Board precedent in assertion of jurisdiction over the Employer.

On November 10, 1981, the Board granted the Employer's request for review.

The Board has reviewed the rulings of the Hearing Officer made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

The Board has considered the entire record in this case with respect to the issues under review, including the briefs,² and hereby adopts the Regional Director's findings and conclusions.³

¹ An election has been conducted and the ballots impounded.

² No further briefs were filed after review was granted, but the Board has considered the brief submitted to the Regional Director and the brief submitted with the Employer's request for review.

³ We are not persuaded by the arguments presented by our dissenting colleagues. As set forth fully by the Regional Director in his discussion of jurisdiction in his decision with which we agree and which we adopt (attached here as an appendix), the Employer recruits and hires staff, develops and maintains personnel management policies, maintains a grievance procedure in which the president of the Employer has the final decision, and remains responsible for hiring, firing, promotions, transfers, demotions, and other terms and conditions of employment subject only to the broad outlines of the United States Department of Labor (DOL) contract. Although our dissenting colleagues contend that the DOL has exercised control over the termination of unit employees, the Employer's vice president who so testified also stated that the termination was the first instance of such control in his own experience in 15 years with the program. Furthermore, terming the Employer a surrogate of the DOL does nothing to overcome the facts presented by the Regional Director that indicate the Employer has broad discretion and control over day-to-day labor relations policies and practices. The fact that the DOL retains the final right of approval for a collective-bargaining agreement does not excuse the Employer from its duty to bargain in good faith with the Petitioner. We do not find this case distinguishable from *The Singer Company, Education Division, Career Systems, Detroit Job Corps Center*, 240 NLRB 965 (1979), wherein the Board asserted jurisdiction over an employer operating a similar Job Corps program, and we find it appropriate to do so here.

DIRECTION

The Regional Director for Region 28 is hereby directed to open and count the impounded ballots, to issue a tally of ballots, and to take further appropriate action in accord with this Decision and the National Labor Relations Board Rules and Regulations, Series 8, as amended.

CHAIRMAN VAN DE WATER and MEMBER HUNTER, dissenting:

Contrary to our colleagues, we would not assert jurisdiction here but would dismiss the petition in accord with the Board's earlier Decision in *Teledyne Economic Development Company*, 223 NLRB 1040 (1976),⁴ and for the reasons set forth in the dissent in *The Singer Company, supra*. Thus, on the basis of the facts as set forth by the Regional Director in his decision, it is clear that the United States Department of Labor (DOL) controls and limits Teledyne's labor relations policies and practices to such an extent that Teledyne is precluded from exercising sufficient independent judgment to allow bargaining in good faith over wages, hours, and other terms and conditions of employment. We would find then that Teledyne shares the exemption of the DOL from the Board's jurisdiction.

We agree with Teledyne's contention that it is but a surrogate for the DOL, acting at its behest and in conformity with all its numerous rules and regulations. Teledyne's sole business activities are to operate Job Corps centers under contract with the DOL. The DOL supplies all facilities and equipment. Because the contract is on a cost-plus-fixed-fee basis, all expenditures are closely controlled and monitored by the DOL, including expenditures related to the employment of personnel sought to be represented by the Petitioner. Contracts for the operation of Job Corps centers specify, *inter alia*, staffing levels, salary ranges, benefits such as health insurance, life insurance, holiday pay, and retirement benefits, and the maximum starting rate for employees, dependent on the rate received during their previous employment. Deviations from the contract must be approved by the DOL. Teledyne may hire staff for unit positions only if the applicants meet the qualifications set forth in the DOL contract or if Teledyne receives permission from the DOL. The DOL must give prior approval for all hires who report directly to the center director or who earn more than \$18,000 (although the record does not indicate whether any in the proposed units would require such approval at this time). The DOL also possesses and has exer-

⁴ Overruled by *The Singer Company, Education Division, Career Systems, Detroit Job Corps Center*, 240 NLRB 965 (1979).

cised control over the termination of employees who would be represented by the Petitioner. Thus, for example, the DOL has secured the dismissal of certain instructors whom it determined not to be an asset to the program.

In addition to the aforementioned strictures on Teledyne's personnel and labor relations policies and practices, the DOL requires that it be given the right of prior approval of any collective-bargaining agreement. Accordingly, while Teledyne has some latitude in assigning staff, setting wage rates within the guidelines, resolving grievances, and handling other day-to-day employment matters, it is the DOL which has the final authority concerning the document which would normally serve as the framework within which decisions on these matters are made for represented employees; i.e., the collective-bargaining agreement.

In the earlier *Teledyne* case cited above, which involved Job Corps centers similar in all relevant particulars to the instant one, the Board declined to assert jurisdiction on the ground that Teledyne shared DOL's exemption from the jurisdiction of the Act. We agree with the rationale in the earlier *Teledyne* case and, accordingly, we would dismiss the petition herein.

APPENDIX

The Employer is a California corporation engaged in the operation and administration of several job corps centers throughout the United States, including a job corps center in Tucson, Arizona. These centers are operated under contract [sic] with the United States Department of Labor (herein called DOL), pursuant to which the Employer annually receives DOL funds in excess of one million dollars from the operation of its various job corps centers. The job corps centers are training facilities that are operated under contract to train disadvantaged young people ages 16 to 22 in various vocational skills. The centers also provide room and board to corps members.

The Petitioner seeks to represent certain employees employed at the Employer's Tucson, Arizona, job corps center. The Employer contends that jurisdiction should not be asserted because of the substantial control DOL exercises over the labor relations policies at the center. The Petitioner argues that the Employer's relationship with the DOL is not such as would preclude the assertion of the Board's jurisdiction.

The record discloses that, under a contractual arrangement with the Employer, DOL supplies all the physical facilities and equipment found in the Tucson job corps classrooms, laboratories, workshops and living quarters. Additionally, the motor vehicles used by the Employer are owned by the United States Government through the General Services Administration. Purchase of any additional equipment or any other expenditures, must be approved by DOL.

DOL regulates the Employer's activities through bid proposals, reports, regulations, and contract terms. The term of the present contract between the Employer and DOL providing for the operation of the Tucson job corps center is July 1, 1981, through July 1, 1983. Under the contract, DOL requires prior approval of, *inter alia*, the selection and retention of the center director, and other employees making in excess of \$18,000 per year, the position descriptions and qualifications of all personnel, and the maximum number of employees in each staff position. DOL further requires approval of the salary ranges of all positions, and the kind and number of employee fringe benefits, including vacation and holiday benefits. The contract also prohibits the Employer from paying new employees any more than 10 percent above the amount they were paid on their previous job, and requires that a certain minimum salary be paid for each staff position. Any deviation must be approved by DOL. The Employer is further required to have sufficient staff on hand at all times, staffing the center 7 days a week, 24-hours per day. Within this limitation, however, the Employer is free to assign employees to shifts within its discretion.

The Employer is required to furnish management and necessary personnel to carry out the programs and training which DOL has approved. In implementing these programs, the Employer recruits and hires qualified staff, develops and maintains personnel management policies, including plans for hiring, supervision, and evaluation of staff, subject only to the broad specifications outlined in the contract or agreement with DOL. This also includes setting salaries within the above-mentioned guidelines ranging up to the maximum approved by DOL, and maintaining a grievance procedure in which the president of the Employer may render a written decision that is final. Notwithstanding the foregoing, I find that the control exercised by DOL is not so pervasive as to preclude meaningful good-faith bargaining by the Employer. As was noted by the Board in *The Singer Company, Education Division*, 240 NLRB 965, 966 (1979), a case which overruled *Teledyne Economic Development Co.*, 223 NLRB 1040 (1976), wherein the Board had previously declined to assert jurisdiction over this same Employer's job corps centers in Pittsburgh, Pennsylvania, while the Employer must negotiate with DOL over the final terms of its contract, the Employer may negotiate with a union representing its employees concerning the proposals which will be included in the Employer's initial bid to DOL. I also note that here, as in *Singer*, the discretion left to the Employer under the contract with DOL is broad enough to permit good-faith bargaining over substantial terms and conditions of employment. The Employer remains responsible for hiring, firing, promotions, demotions, transfers, and other terms and conditions of employment of employees in the unit sought subject only to the broad outlines of its contract with DOL. Moreover, DOL regulations concerning labor relations at job corps centers published in the Federal Register at 20 CFR § 684.120 require that the Employer's job corps centers establish labor management relations in accordance with the National Labor Relations Act. These same

regulations prohibit DOL from intervening in job corps labor disputes. I, therefore, find that it would effectuate the purposes of the Act to assert jurisdiction herein. *Montgomery County Opportunity Board*, 249 NLRB 880

(1980); *The Singer Company, supra*; *Catholic Bishop of Chicago*, 235 NLRB 776 (1978); *Hull House Association*, 235 NLRB 797 (1978).